

paragraph with respect to mental incompetence apply for purposes of this subdivision.

(iv) *Amendment of dispositive provisions.* The provisions of paragraph (e) (4) and (5) of §20.2055-2 of this chapter (Estate Tax Regulations) are to be applied under subdivisions (i) and (iii) of this subparagraph in determining whether there has been an amendment of a dispositive provision of a will.

(c) *Pooled income funds.* Any part of the gross income of a pooled income fund to which §1.642(c)-5 applies for the taxable year that is attributable to net long-term capital gain (as defined in section 1222(7)) which, pursuant to the terms of the governing instrument, is permanently set aside during the taxable year for a purpose specified in section 170(c) shall be allowed as a deduction to the fund in lieu of the limited charitable contributions deduction authorized by section 170(a). No deduction shall be allowed under this paragraph for any portion of the gross income of such fund which is (1) attributable to income other than net long-term capital gain (2) earned with respect to amounts transferred to such fund before August 1, 1969. However, see paragraph (b) of this section for a deduction (subject to the limitations of such paragraph) for amounts permanently set aside by a pooled income fund which meets the requirements of that paragraph. The principles of paragraph (b) or (2) of this section with respect to investment, reinvestment, and separate accounting shall apply under this paragraph in the case of amounts transferred to the fund after July 31, 1969.

(d) *Disallowance of deduction for certain amounts not deemed to be permanently set aside for charitable purposes.* No amount will be considered to be permanently set aside, or to be used, for a purpose described in paragraph (a) or (b)(1) of this section unless under the terms of the governing instrument and the circumstances of the particular case the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be negligible. Thus, for example, where there is possibility of the invasion of the corpus of a charitable remainder trust, as defined in §1.664-

1(a)(1)(ii), in order to make payment of the annuity amount or unitrust amount, no deduction will be allowed under paragraph (a) of this section in respect of any amount set aside by an estate for distribution to such a charitable remainder trust.

For treatment of distributions by an estate to a charitable remainder trust, see paragraph (a)(5)(iii) of §1.664-1.

[T.D. 7357, 40 FR 23740, June 2, 1975; 40 FR 24361, June 6, 1975]

§ 1.642(c)-3 Adjustments and other special rules for determining unlimited charitable contributions deduction.

(a) *Income in respect of a decedent.* For purposes of §§1.642(c)-1 and 1.642(c)-2, an amount received by an estate or trust which is includible in its gross income under section 691(a)(1) as income in respect of a decedent shall be included in the gross income of the estate or trust.

(b) *Reduction of charitable contributions deduction by amounts not included in gross income.* (1) If an estate, pooled income fund, or other trust pays, permanently sets aside, or uses any amount of its income for a purpose specified in section 642(c) (1), (2) or (3) and that amount includes any items of estate or trust income not entering into the gross income of the estate or trust, the deduction allowable under §1.642(c)-1 or §1.642(c)-2 is limited to the gross income so paid, permanently set aside, or used. In the case of a pooled income fund for which a deduction is allowable under paragraph (c) of §1.642(c)-2 for amounts permanently set aside, only the gross income of the fund which is attributable to net long-term capital gain (as defined in section 1222(7)) shall be taken into account.

(2) In determining whether the amounts of income so paid, permanently set aside, or used for a purpose specified in section 642(c) (1), (2), or (3) include particular items of income of an estate or trust not included in gross income, the specific provision controls if the governing instrument specifically provides as to the source out of which amounts are to be paid, permanently set aside, or used for such a purpose.